

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
CLERKS OFFICE

HEATHER KIERNAN,
Plaintiff,

V

ARMORED MOTOR SERVICES OF
AMERICA, INC., and FRANCESCO
CIAMBRIELLO,
Defendants.

2007 MAY -4 P 12:17
Civil Action No. 04-10131-RBC
U.S. DISTRICT COURT
DISTRICT OF MASS.

**AFFIDAVIT OF COUNSEL IN SUPPORT OF VOIR DIRE QUESTIONS
REGARDING VICTIMS OF SEXUAL ASSAULT**

Now comes David R. Ardito, counsel for the Defendant, Francesco Ciambriello, in the above-captioned matter, who states the following under the pains and penalties of perjury:

1. I am the attorney of record for the Defendant, Francesco Ciambriello, in the above-captioned matter.
2. In support of the defendant's request that the venire be asked individual questions regarding whether they have ever been the victim of rape or sexual assault, counsel states that it has been his experience that the statutory questions are not sufficient to protect the defendant from having biased or partial jurors deciding his fate.
3. The Supreme Judicial Court recently recognized that "Rape is a crime that is often hidden, under-recognized, under-reported, and under-documented. The National Women's Study estimated that there were 683,000 forcible rapes of adult women in 1991; 2 percent of rapes were by strangers; and 16 percent were reported to the police. Significant numbers of adolescents and children are the victims of sexual assaults." Commonwealth v. Fuller, 423 Mass. 216, 222 n.5, 667 N.E.2d 847, 852 (1996) (footnotes omitted)
4. The Court's findings are supported by various studies:
 - (A) According to the April 1996 issue of the Bureau of Justice Statistics Bulletin, *National Crime Victimization Survey for 1993-1994*:
 - (1) Almost two-thirds of victims of completed rapes did not report the crime to the police [pg. 1].
 - (2) Only 36 percent of rapes, 20 percent of attempted rapes and 41 percent of sexual assaults were brought to the attention of law enforcement authorities [pg. 3].

- (B) According to the National Victim Center and Crime Victims Research and Treatment Center, *Rape in America: A Report to the Nation* (1992):
- (1) 84 percent of rapes go unreported;
 - (2) 61 percent of all rape cases occurred before the victim reached 18; 29.3 percent of women reported being first raped when they were under 11 and 17 years of age;
 - (3) 13 percent, or one in eight, of adult women has been raped at some time in their lives.
- (C) Dean G. Kilpatrick, et al., *Criminal Victimization: Lifetime Prevalence, Reporting to Police, and Psychological Impact*, 33 Crime and Delinq. 479, 480, 483 (1987) found that between 91.5 percent and 95 percent of rapes go unreported; 23.3 percent of the sample had been raped; 13.1 percent had been the subject of attempted rape and 53 percent had been victims of at least one sexual assault.
- (D) Lee Madigan and Nancy C. Gamble found that 90 percent of rapes go unreported. *The Second Rape: Society's Continued Betrayal of the Victim* (1991).
5. Whether it is a figure of 84 percent, 75 percent, 91.5 percent or 90 percent of sexual assault victims who do not report the crime, it is quite clear that a high number of persons exist who have been victimized and who have not reported the crime to the authorities.
6. Unless the requested questions are put to the venire, there is a high likelihood that a member of the seated jury has been a victim of a crime of rape or sexual assault and as a result would be biased and partial against the defendant. See Commonwealth v. Flebotte, 417 Mass. 348, 355 (1994) where the court recognized that "it might have been helpful..." if the venire had been questioned about prior sexual assaults as a child.

Dated: May 2, 2007

Respectfully submitted,
FRANCESCO CIAMBRIELLO,
By and through counsel,



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